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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,275	08/22/2003	Gerald A. Wilkus	03224-PA-DIV	9329

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ARMSTRONG, WESTERMAN & HATTORI, LLP
Intellectual Property Law Offices
Suite 220
502 Washington Avenue
Towson, MD 21204

EXAMINER	
GRAHAM, MARK S	

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/646,275	WILKUS, GERALD A.	
	Examiner	Art Unit	
	Mark S. Graham	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 5-11,15-18,20-22,26-29 and 31-35 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 5-11,15-18,20-22,26-29 and 31-35 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 35, 8, 9, 15, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Dolan. Element 16 may be considered the target holder. Panel 12 includes element 42 which is received in the holder. The panel is capable of being used as a target for a weapon.

Claims 15-18, 22, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Turnipseed for the reasons explained in the rejection of claims 15-18, 22, and 34 based on Turnipseed in the 6/4/03 action in the parent application.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 26-28 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turnipseed in view of Laporte for the reasons explained in the rejection of claims 26-28 and 31 based on Turnipseed in view of Laporte in the 6/4/03 action in the parent application.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Turnipseed in view of Grant for the reasons explained in the rejection of claim 21 based on Turnipseed in view of Grant in the 6/4/03 action in the parent application.

Claims 5, 7, 20, 29, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dolan in view of Davis.

Dolan discloses the claimed device with the exception of the angled or widened at the top boot. However, as disclosed by Davis it is known to form the boot with both of these features as can be seen in the Fig. 11 and Fig. 7 embodiments respectively. It would have been obvious to one of ordinary skill in the art to have used such boots on the Dolan device as well if it was desired to orient the vertical support in the manner taught by Davis.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dolan.

Claim 10 is obviated for the reasons explained in the claim 8 rejection with the exception of the advertisement. However, the examiner takes official notice that it is known to place advertisements on virtually any object in the public view including backboards. It would have been obvious to one of ordinary skill in the art to have done the same with Dolan's backboard for advertising purposes.

Regarding claim 11, element 29/16 may be considered the holder and it is attached to the vertical support 28 though the sleeve is on the support rather than the holder. However, merely reversing such a male/female connection is considered an obvious reversal of parts and within the purview of the ordinarily skilled artisan.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dolan in view of Hart. Dolan discloses the claimed device with the exception of the wedge. However, as disclosed by Hart it is known to use a wedge to help lock the post in place in the stand. It would have been obvious to one of ordinary skill in the art to have done the same with Dolan's post to help lock it in place when placing it in it is vertical orientation.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 32 above, and further in view of Hart. Dolan in view of Davis obviates the claimed

device for the reasons explained in the claim 32 rejection with the exception of the wedge. However, as disclosed by Hart it is known to use a wedge to help lock the post in place in the stand. It would have been obvious to one of ordinary skill in the art to have done the same with Dolan's post to help lock it in place when placing it in it is vertical orientation.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6-10, 15-18, 20, 21, 22, 26-28, and 31-35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,726,208. Although the conflicting claims are not identical, they are not patentably distinct from each other because the removal of the additionally claimed elements with their corresponding loss of function would have been obvious to one of ordinary skill in the art.

Because claims 6-10, 15-18, 20, 21, 22, 26-28, and 31-35 are readable on the embodiment elected in the parent application and are obviated by the device claimed in the parent application, the above double patenting rejection is appropriate for these claims.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG
7/5/05

Mark S. Graham
Primary Examiner